



Office of the Attorney General

State of Texas

May 20, 1998

DAN MORALES
ATTORNEY GENERAL

Mr. John Steiner
Division Chief
Law Department
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR98-1280

Dear Mr. Steiner:

You ask this office to reconsider our ruling in Open Records Letter No. 98-0902 (1998). Your request for reconsideration was assigned ID# 116327.

The Austin Police Department (the "department") received an open records request for a particular offense report. In Open Records Letter No. 98-0902 (1998), this office concluded that the department could not withhold the requested information under sections 552.103 and 552.108 of the Government Code. You argued that the requested information was excepted from required public disclosure pursuant to sections 552.103 and 552.108 of the Government Code because the requested offense report "relates to two pending criminal prosecutions . . . set for hearing on January 26, 1998."

We requested additional information regarding the status of the hearing because your letter to this office requesting an open records decision was dated February 3, 1998, more than a week after the scheduled court date. You did not respond to our request for additional information. In your request for reconsideration, you explain that the "case went to a hearing on January 26 and is now scheduled for another hearing on June 2, 1998." You further explain, however, that the request from our office for additional information regarding the status of the prosecutions "was administratively overlooked" and the department "inadvertently missed the typed-in request for an update to this case." You defend the fact that the department failed to respond to the request for additional information by stating that the form letter requesting the update did not include a check mark in any of the boxes to indicate that additional information was being requested.

We have reviewed your reasons for requesting reconsideration on this matter. Although there is no check mark in the brackets directing the department to focus on the typed-in request for additional information, the letter clearly in bold face type requests the department to "inform us of the current status of this case" because the request for a ruling

was dated more than a week after the scheduled court date. We do not believe that mere inadvertence on your part relieves you of your statutory requirement under section 552.303(d) to respond to our request for additional information. See Gov't Code § 552.303(e) (requested information presumed open when governmental body fails to respond to request for additional information). Thus, based on the information provided to this office in your original request for a ruling, we do not believe you met your burden of establishing that sections 552.103 and 552.108 apply to this request for information. We, therefore, affirm Open Records Letter No. 98-0902 (1998).

If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Deputy Chief
Open Records Division

LRD/rho

Ref.: ID# 116327

Enclosures: Submitted documents

cc: Mr. Justin McMurtrey
1071 Clayton Lane, Apt. 1201
Austin, Texas 78723
(w/o enclosures)